IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ CRL. REV. P. 764/2005 Reported

RAJENDER JAIN & ANR. ..... Petitioners
Through Mr. M. Krishnamani, Sr. Advocate
with Mr. Rajesh Aggarwal, Advocate

versus

STATE ..... Respondent
Through Mr. Pawan Shamra, Advocate for the State

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

Mr. Justice S. Ravindra Bhat: [Open Court]

1. This revision questions an order on the point of charge dated 26.9.2005, made by the learned Additional Sessions Judge. The petitioner accused are charged with committing offences punishable under Sections 307/452 read with 201/34 IPC.

2. It is alleged that the Petitioner No.1 threatened Shri Sandeep Arora that he should be shot. Thereafter the petitioners along with two armed Guards went inside the building. After sometime they came out and beat Pradeep Anand with fist blows; on which,

Sandeep Arora and others tried to intervene. Petitioner No.1 asked his men to beat them. A gunman allegedly fired a shot, whereas another gunman gave a butt blow

on the head of Pradeep Anand. Thereafter, all four men fled the spot. During investigation, Sandeep Arora was medically examined. He was found to have sustained simple injuries on his parietal region with a blunt object.

3. The petitioner No.1 a builder had constructed "Jaina Towers" conveyed and handed over possession of various shops in the complex to their purchasers. He allegedly had not repaid his liabilities on account of bank loans obtained by him. It was alleged that the bank sought to proceed against the properties. The first petitioner was allegedly under pressure. On 3.9.2001 the petitioners, with two armed guards went to the site of occurrence, where Sandeep Arora, Ajit Singh, Pradeep Anand, Avatar Bhatia, Nilesh Aggarwal, Vijay Aggarwal, Sanjeev Maggu, Virender Verma and Manish Gupta were present.

4. The FIR in this case was lodged and subsequently after investigation the police filed a report under Section 173 Cr.P.C. The petitioners were charged with having committed various offences. It was alleged that they were guilty of offences under the Arms Act. The trial Court after considering the materials produced concluded that there were sufficient grounds to frame charges under Sections 307/452/201 read with Section 34 IPC and did so accordingly.

5. It is contended by Mr. Krishnamani, learned Senior Counsel that the charge under Section 307 was unsustainable on the basis of the materials presented to the trial Court. Counsel contended that the nature of the blows alleged to have been inflicted upon the injured-complainant were such as could not have, in the natural course of events, caused death. He placed reliance upon the medical report to say that

according to the doctor who ministered the victim, the latter had sustained only simple injuries. In these circumstances, the charge under Section 323 alone could have been framed.

6. Learned counsel submitted that the location of the blow alone is not a material fact; the Court has to consider all attendant circumstances to gather the intention of the assailant. If indeed the petitioners had intention of causing such grievous injuries as were likely to cause death, so as to fall within the four corners of Section 307, that would have manifested in a more over manner. Counsel contended that even if the prosecution version in regard to the surrounding circumstances, were to be accepted, there was no question of the petitioner being a party to an assault with intention to inflict such injuries that would have resulted in death.

7. Counsel relied upon the fact that even though a gun was alleged to have been used, the nature of the injuries inflicted were not the result of a gun shot but were simple and superficial; allegedly with the butt of the weapon. Learned counsel relied upon the decision of the Supreme Court reported as *Jai Narain Vs. State of Bihar* AIR 1972 SC 1764 and contended that not all head injuries necessarily point to an intention to commit offences punishable under Section 307. In this case, the injury was superficial and did not lead to any untoward incident. No other ground was urged in support of the petition.

8. Learned APP opposed the petition. According to him the injury inflicted on the head in the parietal region, its description namely, of the length of 11.5 x 0.2 cm coupled with the exhortations by the petitioners that the complainant ought to be

finished, were sufficient for the Court to frame charges under Section 307 as well as the other provisions.

9. As may be seen the undisputed factual matrix is that the petitioners are alleged to have been instrumental in beating up the victim on the head. The first petitioner is a builder; he allegedly defaulted in discharging his liabilities to a bank. The vendees/purchasers of the shops built by him felt threatened and apparently started to pressurized him. He visited the site and a quarrel broke out. In the process the complainant/injured who sought to intervene, was allegedly threatened and beaten up.

10. There is no gain-saying that not every head injury cannot be construed as an attempt to commit murder. There cannot be any inflexible rule that injury on certain parts of the body should necessarily lead to the charge of having committed a particular offence. The surrounding circumstances, the intention of the party or parties concerned to be gathered from the incident, the background of the case, nature of the weapon and intensity of the blow are all relevant factors. In a given case a simple injury on the head without aggravating factors may be mere hurt; in another instance if there are surrounding and aggravating factors, an identical injury or even an act which may not result in an injury, could well justify the charge under Section 307. In this case the nature of the injury though described as simple was inflicted on a sensitive and vital part of the body. Having regard to that part namely, the head, the injury though termed simple and superficial, cannot be construed as manifesting intention to cause mere hurt. One does not need to use the butt of a gun, which is rather heavy to cause a simple hurt. This factor, coupled with the words by the accused, uttered to my

mind, are the key to their intention.

11. It is settled law that the Court at the charge framing stage has to merely sift the evidence and satisfy itself as to whether, prima facie, the materials point to grave suspicion about the accused having committed the offence. The Court should not embark on a meticulous examination or analysis of the evidence, a task ordained by the Code, to be undertaken at the stage of trial.

12. Having considered the materials on record, the trial Court felt there were sufficient grounds to frame the charges as it did. I am not persuaded to hold otherwise; the facts do justify the charges framed by the trial Court.

13. In view of the above findings this petition has to fail. It is accordingly dismissed.

July 24, 2007 S. RAVINDRA BHAT, J.

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